

WILSON, RYAN & CAMPILONGO
115 Sansome Street, Suite 400
San Francisco, California 94104

ANDREW H. WILSON, ESQ., SBN 063209
SHAUNA T. RAJKOWSKI, ESQ., SBN 148239
WILSON, RYAN & CAMPILONGO
115 Sansome Street, Suite 400
San Francisco, California 94104
(415) 391-3900 / (415) 954-0938

LAURIE J. BARTILSON, ESQ, SBN 139220
MOXON & BARTILSON
6255 Sunset Boulevard, Suite 2000
Hollywood, California 90028
(213) 960-1936 - (213) 953-3351

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

GERALD ARMSTRONG,

Debtor.

Case No. 95 10911 aj
Chapter 7

CHURCH OF SCIENTOLOGY INTERNATIONAL,
a California non-profit religious
corporation,

Plaintiff,

v.

GERALD ARMSTRONG,

Defendant.

Adv. Pro. No. 95 1164
Trial Date: Feb. 13, 1996

DECLARATION OF ANDREW H. WILSON
IN SUPPORT OF EX PARTE APPLICATION
FOR AN ORDER SHORTENING TIME FOR HEARING ON MOTION
TO AMEND ADVERSARY COMPLAINT AND FOR CONTINUANCE OF TRIAL DATE

I, ANDREW H. WILSON declare as follows:

1. My name is Andrew H. Wilson and am an attorney at law
licensed to practice before the Courts of the State of California

1 and before this Court. I am one of the partners at the law firm of
2 Wilson, Ryan & Campilongo, 115 Sansome Street, Suite 400, San
3 Francisco, California 94104 ("WRC"). As one of the attorneys
4 representing of Plaintiff CHURCH OF SCIENTOLOGY INTERNATIONAL
5 ("Creditor") in the above-captioned matter and in Marin Superior
6 Court Action entitled Church of Scientology International v. Gerald
7 Armstrong v. Gerald Armstrong, et al., Marin County Superior Court
8 Case No. 157680 consolidated (the "Marin Action"), I have personal
9 knowledge of the facts set forth below, except as to those matters
10 set forth on information and belief. If called as a witness, I can
11 competently testify to the matters set forth herein.

12 2. In the Marin Action, on December 1, 1995, Judge Thomas
13 issued a tentative ruling which directed the Clerk of the Court to
14 enter final judgment in favor of Plaintiff in accordance with the
15 order of Summary Adjudication and Permanent Injunction. After the
16 hearing, and in accordance with the Marin Court Procedures, I
17 submitted a proposed order to Judge Thomas. This proposed order was
18 not returned after a number of weeks.

19 3. I then contacted Judge Thomas' clerk to inquire about the
20 proposed order and was informed that the order was lost or was not
21 able to be located. Therefore, on January 18, 1996, I resubmitted
22 the proposed order and expect to receive a signed copy of this order
23 within the week. A true and correct copy of the Proposed Order is
24 attached hereto and incorporated herein as Exhibit A.

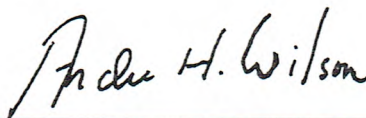
25 4. In its Memorandum of Decision issued May 25, 1995, this
26 Court stated that the injunction may survive the bankruptcy
27 discharge, and that any damages may be nondischargeable. This Court
28 did not determine whether a contract remains enforceable after the

1 debtor's obligations arising from pre-petition breaches have been
2 discharged, or whether any damages resulting from the Marin Action
3 are dischargeable. These issues are now ripe for this Court to
4 determine as a part of Plaintiff's adversary complaint.

5 5. As a result of the impending trial date, Plaintiff
6 requests that its Motion to Amend the Adversary Complaint and
7 Continue the Trial Date be heard on shortened time. My co-counsel,
8 Laurie Bartilson, wrote to Mr. Armstrong requesting that he
9 stipulate to having the matter heard on shortened time on February
10 2, 1996. A true and correct copy of this letter is attached hereto
11 and incorporated herein as Exhibit B.

12 6. On January 23, 1996, Gerald Armstrong faxed a letter in
13 response to the letter sent by my co-counsel. Mr. Armstrong's
14 letter does not respond to Plaintiff's request that he agree to
15 having Plaintiff's Motion heard on shortened time. A true and
16 correct copy of this letter is attached hereto and incorporated
17 herein as Exhibit C.

18 I declare under the penalty of perjury pursuant to the laws of
19 the State of California that the foregoing is true and correct and
20 that this Declaration was executed on January 24, 1996 at San
21 Francisco, California.

22 

23 ANDREW H. WILSON
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25
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27
28

WILSON, RYAN & CAMPILONGO

A PROFESSIONAL LAW CORPORATION

115 SANSOME STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

(415) 391-3900

TELECOPY (415) 954-0938

ANDREW H. WILSON
STEPHEN C. RYAN*
CHRISTOPHER B. TIGNO
ANNE R. KNOWLES
LINDA M. FONG
SHAUNA T. RAJKOWSKI
IAIN-BREAC MACLEOD
JASON S. COHEN

FILE

OF COUNSEL
LISA F. CAMPILONGO

*CERTIFIED TAXATION SPECIALIST
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

January 18, 1996

VIA HAND DELIVERY

The Honorable Gary W. Thomas
Superior Court Judge
MARIN COUNTY SUPERIOR COURT
Department 1
3501 Civic Center Drive
San Rafael, CA 94903-3904

Re: Church of Scientology v. Gerald Armstrong
Marin County Case No. 157 680
Our File No. SCI02-013

Dear Judge Thomas:

As you will recall, I inquired of the Court and its personnel on Tuesday, January 16, concerning the proposed orders on the various summary judgment motions in the above-entitled matter, which were previously submitted for your signature.

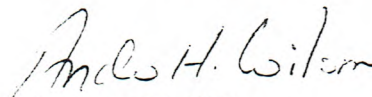
The Court indicated that it did not recall having seen or signed these orders, and I stated that we would simply resubmit them. They are enclosed, together with the cover letter of December 13, 1995, which reflects that these orders had been sent to Messrs. Greene and Walton. Mr. Greene's facsimile signature is enclosed, and Mr. Walton has not responded.

We ask that conformed copies be returned to us in the envelope provided.

Please call me if you have any questions.

Very truly yours,

WILSON, RYAN & CAMPILONGO


Andrew H. Wilson

AHW-1416.LTR
Enclosures
SASE

MOXON & BARTILSON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028
TELEPHONE (213) 960-1936
TELECOPIER (213) 953-3351

KENDRICK L. MOXON

LAURIE J. BARTILSON

ALSO ADMITTED IN
THE DISTRICT OF COLUMBIA

ALSO ADMITTED IN
MASSACHUSETTS

December 13, 1995

By Hand Delivery

The Honorable Gary W. Thomas
Superior Court Judge
Marin County Superior Court
Department 1
Hall of Justice
3501 Civic Center Drive
San Rafael, California 94903-3904

Re: Church of Scientology International v. Gerald Armstrong,
Marin County No. 157 680

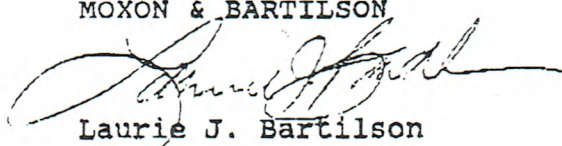
Dear Judge Thomas:

Enclosed are proposed orders concerning the various motions in the above-entitled matter. They are the tentative rulings which you made final on December 1, 1995.

Mr. Greene sent his signatures concerning these proposed orders to me by facsimile; they are attached. I sent the proposed orders to Mr. Walton by fax and mail on December 6, 1995. He has not responded.

Sincerely,

MOXON & BARTILSON



Laurie J. Bartilson

LJB:aeu

cc: Andrew H. Wilson, Esq. (by mail)
cc: Ford Greene, Esq. (by mail)
cc: Michael Walton, Esq. (by mail)

1 ANDREW H. WILSON, ESQ., State Bar #063209
LINDA M. FONG, ESQ., State Bar #124232
2 WILSON, RYAN & CAMPILONGO
115 Sansome Street, Suite 400
3 San Francisco, California 94104
(415) 391-3900
4 (415) 954-0938 (fax)

5 LAURIE J. BARTILSON, ESQ., State Bar #139220
MOXON & BARTILSON
6 6255 Sunset Boulevard, Ste. 2000
Hollywood, CA 90028
7 (213) 960-1936
(213) 953-3351 (fax)
8
9 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY INTERNATIONAL,) Case No. 157 680
a California not-for-profit)
14 religious corporation,) [CONSOLIDATED]
15 Plaintiff,) [PROPOSED] ORDER RE MOTION
v.) OF PLAINTIFF FOR
16) DEPT: 1
17 GERALD ARMSTRONG, et al.,)
18 Defendants.) Trial Date: None
19)
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WILSON, RYAN & CAMPILONGO
115 Sansome Street, Suite 400
San Francisco, California 94104

1 This matter came on for hearing on December 1, 1995, on motion
2 of Plaintiff Church of Scientology International for (1) Summary
3 Adjudication of the First Cause of Action of Armstrong's First
4 Amended Complaint; (2) Severance; (3) Dismissal of Unadjudicated
5 Claims; and (4) Entry of Final Judgment.

6 Plaintiff Church of Scientology International appeared by its
7 attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie
8 J. Bartilson of Moxon & Bartilson. Defendant Armstrong appeared by
9 his attorney, Ford Greene. Having read and considered the moving
10 and opposing papers, and the evidence and arguments presented
11 therein and at the hearing, and good cause appearing:

12 IT IS ORDERED:

13 1. The Motion of Plaintiff for Summary Adjudication of the
14 First Cause of Action of the Armstrong's First Amended Cross-
15 complaint is DENIED. As to the first cause of action of defendant's
16 cross-complaint, plaintiff has failed to meet its burden of showing
17 that the Court has determined the enforceability of paragraphs 7I
18 and 18E of the Settlement Agreement. The motions directed at the
19 fourth, sixth, thirteenth, sixteenth, seventeenth and nineteenth
20 causes of action only involved paragraph 7D of the Settlement
21 Agreement. (See plaintiff's Exhibits C and D to Request for
22 Judicial Notice.) Defendant does not dispute that "paragraphs 4A
23 and 4B concern an appeal which has already become final, and as a to
24 which no rights, duties or obligations could be enforced in the
25 future." (See plaintiff's Separate Statement of Undisputed Facts,
26 Number 3) The Order of Permanent Injunction did not find violations
27 of paragraphs 7I and 18E. (See plaintiff's Request for Judicial
28 Notice, Exhibit E, p. 2, ¶4.);

1 2. Plaintiff's motion is sever is GRANTED. The Fraudulent
2 Conveyance Action (original Marin County Superior Court Case No.
3 157680) is severed from the Breach of Contract Action (original
4 Marin County Superior Court Case No. 152229, also Los Angeles
5 Superior Court Case No. BC 052395). Further, all activity in the
6 Fraudulent Conveyance Action is STAYED during the pendency of
7 Armstrong's bankruptcy case;

8 3. The first, second, third, fifth, seventh, eighth, ninth,
9 tenth, eleventh, twelfth, fourteenth, fifteenth and eighteenth
10 causes of action of plaintiff's Second Amended Complaint for breach
11 of contract are DISMISSED without prejudice, pursuant to C.C.P.
12 §581(c);

13 4. The Clerk of the Court is directed to ENTER FINAL JUDGMENT
14 in favor of plaintiff in accordance with the Orders of Summary
15 Adjudication and Permanent Injunction attached hereto as Exhibits A,
16 B and C;

17 5. Plaintiff, Church of Scientology International, is
18 ADJUDICATED the prevailing party in this action, pursuant to Civil
19 Code Section 1717, and is awarded its attorney's fees and costs
20 pursuant to that section and the contract between the parties.
21

22 Dated: _____, 1996

GARY W. THOMAS
JUDGE OF THE SUPERIOR COURT

24
25 Submitted by:

26 Laurie Bartilson
27 MOXON & BARTILSON
28

1 WILSON, RYAN & CAMPILONGO

2 BY: Andrew H. Wilson
3 Andrew H. Wilson

4 Attorneys for Plaintiff
5 CHURCH OF SCIENTOLOGY
INTERNATIONAL

6 APPROVED AS TO FORM:

7
8 By: _____
Ford Greene, Esq.
HUB LAW OFFICES
9 Attorney for Defendants
GERALD ARMSTRONG and THE GERALD
10 ARMSTRONG CORPORATION

11
12 By: _____
Michael Walton, Esq.
Attorney for Defendants MICHAEL
13 WALTON and SOLINA WALTON

14

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1 WILSON, RYAN & CAMPILONGO

2 MOXON & BARTILSON

3

By: _____

4 Laurie J. Bartilson

5 Attorneys for Plaintiff
6 CHURCH OF SCIENTOLOGY
INTERNATIONAL

7 APPROVED AS TO FORM:

8

9 By: _____

10 Ford Greene, Esq.
11 HUB LAW OFFICES
Attorney for Defendants
12 GERALD ARMSTRONG and THE GERALD
ARMSTRONG CORPORATION

13

By: _____

14 Michael Walton, Esq.
15 Attorney for Defendants MICHAEL
WALTON and SOLINA WALTON

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EXHIBIT A

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00

DATE: 1/27/95

DEPT: 1

JUDGE: GARY W. THOMAS

REPORTER: E. PASSARIS

CLERK: J. BENASSINI

CASE NO: 157680

TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

THE MOTION OF PLAINTIFF FOR SUMMARY ADJUDICATION OF ISSUES IS GRANTED AS TO THE FOURTH AND SIXTH CAUSES OF ACTION AND DENIED AS TO THE ELEVENTH CAUSE OF ACTION.

AS TO ALL CAUSES OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE AS TO WHETHER THE LIQUIDATED DAMAGES PROVISION IS INVALID. DEFENDANT RELIES ON THE LAW AS IT EXISTED PRIOR TO JULY 1, 1978. (SEE UNITED SAV. & LOAN ASSN. V. REEDER DEV. CORP. (1976) 57 CAL.APP.3D 282 AND EARLIER VERSIONS OF CIV. CODE, §§ 1670 AND 1671.) THE LAW NOW PRESUMES THAT LIQUIDATED DAMAGES PROVISIONS ARE "VALID UNLESS THE PARTY SEEKING TO INVALIDATE THE PROVISION ESTABLISHES THAT THE PROVISION WAS UNREASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE CONTRACT WAS MADE." (CIV. CODE, § 1671, SUBD. (b).) DEFENDANT'S EVIDENCE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT REGARD. ALTHOUGH DEFENDANT STATES IN HIS DECLARATION THAT HE WAS NOT INVOLVED IN NEGOTIATING THE PROVISION (SEE D'S EX. 1, ¶12), HE GOES ON TO STATE THAT HE DISCUSSED THE PROVISION WITH TWO ATTORNEYS BEFORE SIGNING THE AGREEMENT. (ID., ¶¶12-13.) THUS, HE CLEARLY KNEW OF THE PROVISION YET CHOSE TO SIGN IT. HE HAS NOT SHOWN THAT HE HAD UNEQUAL BARGAINING POWER OR THAT HE MADE ANY EFFORTS TO BARGAIN OR NEGOTIATE WITH RESPECT TO THE PROVISION. (SEE H. S. PERLIN CO. V. MORSE SIGNAL DEVICES (1989) 209 CAL.APP.3D 1289.) DEFENDANT NEXT STATES THAT PLAINTIFF'S ACTUAL DAMAGES ARE ZERO. (D'S EX. 1, ¶12.) HOWEVER, "THE AMOUNT OF DAMAGES ACTUALLY SUFFERED HAS NO BEARING ON THE VALIDITY OF THE LIQUIDATED DAMAGES PROVISION..." (SEE LAW REVISION COMMISSION COMMENT TO § 1671.) FINALLY, DEFENDANT POINTS TO THE FACT THAT OTHER SETTLEMENT AGREEMENTS CONTAIN A \$10,000 LIQUIDATED DAMAGES PROVISION. (SEE D'S EXS. 2C AND 2D.) THIS ALONE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT DEFENDANT HAS NOT SHOWN THAT CIRCUMSTANCES DID NOT CHANGE BETWEEN 12/86 AND 4/87 AND THAT THOSE SETTLING PARTIES STAND IN THE SAME OR SIMILAR POSITION TO DEFENDANT (I.E., THAT THEY WERE AS HIGH UP IN THE ORGANIZATION AND COULD CAUSE AS MUCH DAMAGE BY SPEAKING OUT AGAINST PLAINTIFF OR THAT THEY HAVE/HAD ACCESS TO AS MUCH INFORMATION AS DEFENDANT).

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SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00

DATE: 1/27/95

DEPT: 1

JUDGE: GARY W. THOMAS

REPORTER: E. PASSARIS

CLERK: J. BENASSINI

CASE NO: 157680

TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

DEFENDANT ALSO HAS NOT RAISED A TRIABLE ISSUE REGARDING DURESS. DEFENDANT'S OWN DECLARATION SHOWS HE DID NOT EXECUTE THE AGREEMENT UNDER DURESS IN THAT IT SHOWS THAT HE CAREFULLY WEIGHED HIS OPTIONS. (SEE D'S EX. 1, ¶10.) IT CERTAINLY DOES NOT SHOW THAT HE DID SOMETHING AGAINST HIS WILL OR HAD "NO REASONABLE ALTERNATIVE TO SUCCUMBING." (SEE IN RE MARRIAGE OF BALTIMS (1989) 212 CAL.APP.3D 66, 84.) IN ADDITION, DEFENDANT IS RELYING ON THE CONDUCT OF A THIRD PARTY (FLYNN) TO ESTABLISH DURESS, YET HE SETS FORTH NO FACT OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT PLAINTIFF HAD REASON TO KNOW OF THE DURESS. (SEE LEEPER V. BELTRAMI (1959) 53 CAL.2D 195, 206.)

AS TO THE FOURTH CAUSE OF ACTION, CONTRARY TO DEFENDANT'S ARGUMENT, THE SUBJECT DECLARATION DOES MORE THAN MERELY AUTHENTICATE DOCUMENTS. (SEE P'S EX. 1(A)(11), ¶¶1-3.) THE COURT FINDS THAT THE DECLARATION CONSTITUTES A DISCLOSURE OF DEFENDANT'S "EXPERIENCES WITH" PLAINTIFF OR "KNOWLEDGE OR INFORMATION" CONCERNING PLAINTIFF AND HUBBARD. (SEE P'S EX. 1B, ¶7D.) DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING OBSTRUCTION OF JUSTICE/ SUPPRESSION OF EVIDENCE. THE SETTLEMENT AGREEMENT EXPRESSLY DOES NOT PROHIBIT DEFENDANT FROM DISCLOSING INFORMATION PURSUANT TO SUBPOENA OR OTHER LEGAL PROCESS. (SEE P'S EX. 1B, ¶7H; CONTRAST WITH PEN. CODE, §§ 136.1 AND 138, WILLIAMSON V. SUPERIOR COURT (1978) 21 CAL.3D 829, PEOPLE V. PIC'L (1982) 31 CAL.3D 731.) NOR IS PLAINTIFF IN THIS CAUSE OF ACTION SEEKING TO PROHIBIT DISCLOSURE TO GOVERNMENT AGENCIES CONDUCTING INVESTIGATIONS PURSUANT TO STATUTORY OBLIGATIONS. (CONTRAST WITH MARY R. V. B. & R. CORP. (1983) 149 CAL.APP.3D 308 AND ALLEN V. JORDANOS' INC. (1975) 52 CAL.APP.3D 160.) EVEN IF A PORTION OF THE AGREEMENT COULD BE CONSTRUED TO SO PROHIBIT (SEE, E.G., ¶10), PLAINTIFF IS NOT RELYING ON THAT SECTION. NOR HAS DEFENDANT SHOWN THAT THE PROVISION IS SO SUBSTANTIAL AS TO RENDER THE ENTIRE CONTRACT ILLEGAL. (CONTRAST WITH ALLEN, SUPRA, 52 CAL.APP.3D AT 166.

TO 914.59540938.418*

01-17-96 01:35PM

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00

DATE: 1/27/95

DEPT: 1

JUDGE: GARY W. THOMAS

REPORTER: E. PASSARIS

CLERK: J. BENASSINI

CASE NO: 157680

TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

AS TO THE SIXTH CAUSE OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING THE CNN INTERVIEW. DEFENDANT ADMITTED IN HIS DEPOSITION THAT HIS CONVERSATION WITH CNN INVOLVED KNOWLEDGE HE HAD GAINED BECAUSE OF HIS YEARS OF EXPERIENCE WITH THE ORGANIZATION (P'S EX. 1A AT 344:1-4), THUS REFUTING HIS ARGUMENTS THAT HIS STATEMENT WAS BASED ON KNOWLEDGE ACQUIRED AFTER THE SETTLEMENT AGREEMENT AND THAT HIS INTERVIEW WAS DIRECTLY RELATED TO THE INSTANT LITIGATION. IN ADDITION, PLAINTIFF SET FORTH NO FACTS OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT HE COULD DISCLOSE INFORMATION ACQUIRED AFTER EXECUTION OF THE SETTLEMENT AGREEMENT OR THAT HE COULD MAKE SUCH STATEMENTS IN THE CONTEXT OF FUTURE LITIGATION. FINALLY, THERE IS NOTHING IN THE STATEMENT WHICH TIES IT TO EITHER OF THE ARGUMENTS RAISED BY DEFENDANT. DEFENDANT ALSO FAILS TO RAISE A TRIABLE ISSUE REGARDING THE AMERICAN LAWYER INTERVIEW. DEFENDANT'S CLAIM THAT HE ONLY DISCUSSED THE INSTANT LITIGATION IS REFUTED BY HIS OWN ADMISSION THAT HE DISCUSSED "THE PLIGHT OF THE ORGANIZATION [AND] WHAT IT WOULD TAKE TO END ITS LEGAL TROUBLES." (D'S EX. 1D AT 352:15-19.) DEFENDANT'S CLAIM THAT HIS DISCUSSION INVOLVED "NOTHING MORE THAN WHAT JUDGE BRECKENRIDGE STATED IN HIS DECISION IN ARMSTRONG I" IS REFUTED BY HIS ADMISSION THAT HE DID NOT RECALL DISCUSSING THE BRECKENRIDGE OPINION WITH THE REPORTER. (D'S EX. 1D AT 358:20-23.) FURTHER, DEFENDANT POINTS TO NOTHING IN JUDGE BRECKENRIDGE'S OPINION WHICH COINCIDES TO THOSE MATTERS DISCUSSED BY DEFENDANT.

AS TO THE ELEVENTH CAUSE OF ACTION, PLAINTIFF HAS NOT SHOWN THAT DEFENDANT VIOLATED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. THE DECLARATION RELIED ON BY PLAINTIFF (P'S EX. 1(A)(8)) DOES NOT DISCLOSE DEFENDANTS "EXPERIENCES WITH THE CHURCH OF SCIENTOLOGY [OR] ANY KNOWLEDGE OR INFORMATION HE MAY HAVE CONCERNING THE CHURCH OF SCIENTOLOGY..."

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SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00

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CLERK: J. BENASSINI

CASE NO: 157680

TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

DEFENDANT ARMSTRONG FILED A SUPPLEMENTAL DECLARATION AND EVIDENCE SIX DAYS LATE. THE COURT DID NOT PERMIT SAME. THE PLAINTIFF'S MOTION TO STRIKE THE SUPPLEMENTAL PAPERS FROM THE FILE IS GRANTED. PLAINTIFF'S REQUEST FOR SANCTIONS IS GRANTED. DEFENDANTS KNEW THE LATENESS OF THE FILING, SOME SIX DAYS. THERE WAS AMPLE TIME TO SEEK THE COURT'S PERMISSION FOR A LATE FILING. PERMISSION WAS NOT SOUGHT. SANCTIONS REQUESTED BY PLAINTIFF PURSUANT TO SECTION 437C(1) ARE GRANTED IN THE AMOUNT OF \$750, AS THE COURT FINDS THIS SIX-DAYS LATE FILING TO BE IN BAD FAITH.

TOTAL P.84

01-17-96 01:35PM

10 31410304030014.00
MARIN COUNTY SUPERIOR COURT

JAN 28 1995 14:13

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F.04

FILED

OCT 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

1 Andrew H. Wilson, SBN 063209
2 WILSON, RYAN & CAMPILONGO
3 115 Sansome Street
4 Fourth Floor
5 San Francisco, California 94104
6 (415) 391-3900
7 Telefax: (415) 954-0938
8
9 Laurie J. Bartilson, SBN 139220
10 MOXON & BARTILSON
11 6255 Sunset Boulevard, Suite 2000
12 Hollywood, CA 90028
13 (213) 960-1936
14 Telefax: (213) 953-3351
15
16 Attorneys for Plaintiff
17 CHURCH OF SCIENTOLOGY
18 INTERNATIONAL

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY	)	CASE NO. BC 157680
14 INTERNATIONAL, a California not-)	
15 for-profit religious corporation,	)	[PROPOSED]
16)	
17 Plaintiff,	)	ORDER OF SUMMARY JUDGMENT
18	)	AS TO THE THIRTEENTH,
19 vs.	)	SIXTEENTH, SEVENTEENTH, AND
20	)	NINETEENTH CAUSES OF ACTION
21)	
22 GERALD ARMSTRONG; DOES 1 through	)	DATE: October 6, 1995
23 25, inclusive,	)	TIME: 9:00 a.m.
24	)	DEPT: 1
25)	
26 Defendants.	)	TRIAL DATE: Vacated
27)	
28)	

24 This matter came on for hearing on October 6, 1995, on
25 motion of plaintiff Church of Scientology International ("the
26 Church") for Summary Adjudication of the Thirteenth, Sixteenth,
27 Seventeenth, and Nineteenth Causes of Action of the Second
28 Amended Complaint. Plaintiff Church of Scientology International

263

1 appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan &
2 Campilongo and Laurie J. Bartilson of Bowles & Moxon, defendant
3 Armstrong appeared by his attorney, Ford Greene. Having read and
4 considered the moving and opposing papers, and the evidence and
5 arguments presented therein and at the hearing, and good cause
6 appearing:

7 IT IS ORDERED:

8 1. The Motion of Plaintiff for Summary Adjudication of
9 Issues as to the Thirteenth, Sixteenth, Seventeenth, and
10 Nineteenth Causes of Action of the Second Amended Complaint is
11 GRANTED in favor of Plaintiff, Church of Scientology
12 International, and against Defendant, Gerald Armstrong, in the
13 amount of \$200,000.

14 Plaintiff has met its burden of showing that defendant
15 breached the settlement agreement and that it is entitled to
16 liquidated damages of \$50,000 for each breach. Defendant has
17 failed to raise a triable issue as to any of the causes of
18 action, as follows:

19 INVALIDITY OF LIQUIDATED DAMAGES PROVISION: Defendant's
20 evidence regarding his attorneys' failure to represent his
21 interests (see Facts 43 and 68) is hearsay and/or not based on
22 personal knowledge. The opinion of defendant's attorney as to
23 the validity of the provision (see, e.g., Facts 52-54, 57-60) is
24 irrelevant and hearsay. The fact that two other clients signed a
25 settlement agreement containing the same liquidated damages
26 amount (see Facts 55-56 and 63-64) does not raise an inference
27 that the provision was unreasonable. Defendant's evidence is
28 insufficient to raise a reasonable inference of unequal

1 bargaining power (no personal knowledge shown that plaintiff, as
2 opposed to Flynn, positioned defendant as a "deal breaker";
3 Flynn's statements hearsay; no personal knowledge shown of
4 plaintiff's wealth; wealth alone does not raise inference of
5 unequal bargaining power since no showing defendant desperate for
6 money and had to accept on plaintiff's terms). Defendant's
7 evidence does not raise an inference that plaintiff's calculation
8 is "unfathomable" (Fourteenth Cause of Action seeks \$50,000 for
9 each of 18 letters; Nineteenth Cause of Action is based only on
10 declarations, not on other contacts between defendant and
11 attorney/other clients). Defendant fails to establish how he
12 knows plaintiff had not been injured by his statements at the
13 time of settlement.

14 DURESS: Flynn's statements to defendant are hearsay. (See,
15 e.g., D's Facts 1C and 1D.) Further, defendant has not shown
16 that plaintiff was aware of Flynn's purported duress of
17 defendant. (See *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 206.)
18 Contrary to defendant's statement about duress, "careful weighing
19 of options" is completely inconsistent with an absence "of the
20 free exercise of his will power" or his having "no reasonable
21 alternative to succumbing." (See *Philippine Export & Foreign*
22 *Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3D 1058,
23 1078; *In Re Marriage of Baltins* (1989) 212 Cal.App.3D 66, 84.)

24 FRAUD: Flynn's statements to defendant (see Fact 78) are
25 hearsay. The Court finds that the portions of the agreement
26 cited by defendant (see Facts 79 and 80) do not establish a
27 mutual confidentiality requirement. Paragraph 7(I) only
28 prohibits the parties from disclosing information in litigation

1 between the parties; paragraph 18(D) only prohibits disclosure of
2 the terms of the settlement; defendant has not shown that
3 plaintiff did either of those things. Further, "[s]omething more
4 than nonperformance is required to prove the defendant's
5 intention not to perform his promise." (*Tenzer v. Superscope,*
6 *Inc.* (1985) 39 Cal.3d 18, 30-31).

7 NO SPECIFIC PERFORMANCE, BREACH OF EXPRESS AND IMPLIED
8 COVENANT: Defendant relies on the purported mutuality
9 requirement, which he has failed to establish.

10 FIRST AMENDMENT: First Amendment rights may be waived by
11 contract. (See *ITT Telecom Products Corp. v. Dooley* (1989) 214
12 Cal.App.3D 307, 319.)

13 2. The plaintiff has asked that the exhibits which were
14 previously ordered sealed be stricken as they are trade secrets,
15 irrelevant to this motion. This request is GRANTED. They are
16 not relevant. Further, they were filed by Mr. Armstrong in pro
17 per when he is, in fact, represented by counsel.

18 Dated: October __, 1995

19 OCT 17 1995

20 GARY W. THOMAS

21 GARY W. THOMAS
22 Judge of the Superior Court

23 Approved as to form:
24
25

26 Ford Greene
27 Attorney for Defendants Gerald
28 Armstrong and the Gerald Armstrong
Corporation

EXHIBIT C

FILED

OCT 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

1 Andrew H. Wilson, SBN 063209
2 WILSON, RYAN & CAMPILONGO
3 115 Sansome Street
4 Fourth Floor
5 San Francisco, California 94104
6 (415) 391-3900
7 Telefax: (415) 954-0938

8 Laurie J. Bartilson, SBN 139220
9 MOXON & BARTILSON
10 6255 Sunset Boulevard, Suite 2000
11 Hollywood, CA 90028
12 (213) 960-1938
13 Telefax: (213) 953-3351

14 Attorneys for Plaintiff
15 CHURCH OF SCIENTOLOGY
16 INTERNATIONAL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California not-for-profit
religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through
25, inclusive,

Defendants.

CASE NO. BC 157680

~~PROPOSED~~

ORDER OF PERMANENT
INJUNCTION

DATE: October 6, 1995

TIME: 9:00 a.m.

DEPT: 1

TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff
Church of Scientology International ("the Church") for Summary Adjudication of
the Twentieth Cause of Action of the Second Amended Complaint. Plaintiff
Church of Scientology International appeared by its attorneys, Andrew H. Wilson
of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon,

1 defendant Armstrong appeared by his attorney, Ford Greene. Having read and
2 considered the moving and opposing papers, and the evidence and arguments
3 presented therein and at the hearing, and good cause appearing:

4 IT IS ORDERED:

5 The Church's motion for summary adjudication of the twentieth cause of
6 action of the Second Amended Complaint is GRANTED. The Court finds that there
7 is no triable issue of material fact as to any of the following:

8 1. Plaintiff and defendant freely and voluntarily entered into a Mutual
9 Release of All Claims and Settlement Agreement ("Agreement") in December,
10 1986.

11 2. Plaintiff performed all of its obligations pursuant to the Agreement.

12 3. Defendant Armstrong received substantial consideration for the
13 promises which he made in the Agreement.

14 4. Since 1990, defendant Armstrong has repeatedly breached
15 paragraphs 7(D), 7(E), 7(H), 7(G), 10, 18(D) and 20 of the Agreement.

16 5. Between 1991 and the present, Armstrong breached paragraphs 7(G),
17 7(H) and 10 of the Agreement by providing voluntary assistance, exclusive of
18 testimony made pursuant to a valid subpoena, to the following private individuals,
19 each of whom was pressing a claim or engaged in litigation with plaintiff and/or
20 one or more of the designated beneficiaries of the Agreement:

21 * Vicki and Richard Aznaran, anti-Scientology litigants in the case of
22 Vicki Aznaran, et al. v. Church of Scientology International, United States
23 District Court for the Central District of California, Case No. CV 88-1786
24 (JMI) (Sep.St.Nos. 11-16);

25 * Joseph A. Yanny, anti-Scientology litigant in the case of Religious
26 Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior
27 Court No. C 690211 and Religious Technology Center et al. v. Joseph
28 Yanny, et al., Los Angeles Superior Court No. BC 033035 (Sep.St.Nos. 17-

20);

* Malcolm Nothling, anti-Scientology litigant in the matter between Malcolm Nothling and the Church of Scientology in South Africa, Adi Codd, Diane Kemp, Glen Rollins; Supreme Court of South Africa (Witwatzbrand Local Division) Case No. 19221/88. [Sep.St.Nos. 21-24];

* Reader's Digest Corporation, anti-Scientology litigant in the case of Church of Scientology of Lausanne vs. Kiosk AG, Basel, Switzerland [Sep.St.Nos. 25-26];

* Richard Behar, anti-Scientology litigant in the case of Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company and Richard Behar, United States District Court, Southern District of New York, Case No. 92 Civ. 3024 PKL [Sep.St.Nos. 27-28];

* Steven Hunziker, anti-Scientology litigant in the case of Hunziker v. Applied Materials, Inc., Santa Clara Superior Court Case No. 692629 [Sep.St.Nos. 29-33];

* David Mayo, anti-Scientology litigant in the case of Religious Technology Center v. Robin Scott, et al., United States District Court for the Central District of California, Case No. 85-711 [Sep.St.Nos. 34-35];

* Cult Awareness Network, anti-Scientology litigant in the case of Cult Awareness Network v. Church of Scientology International, et al., Circuit Court of Cook County, Illinois, No. 94L804 [Sep.St.Nos. 38-39];

* Lawrence Wollersheim, anti-Scientology litigant in the cases of Lawrence Wollersheim v. Church of Scientology of California, Los Angeles Superior Court Number C332027 and Church of Scientology of California v. Lawrence Wollersheim, Los Angeles Superior Court Number BC074815 [Sep.St.Nos. 40-42];

* Ronald Lawley, anti-Scientology litigant in the cases of Religious Technology Center, et al. vs. Robin Scott, et al., U.S. District Court, Central

District of California, Case No. 85-711 MRP(Bx); Matter Between Church of Scientology Advanced Organization Saint Hill Europe and Africa, and Robin Scott, Ron Lawley, Morag Bellmaine, Stephen Bisbey in the High Court of Justice Queen's Bench Division, Case 1984 S No. 1675; and Matter Between Church of Scientology Religious Education College Inc., and Nancy Carter, Ron Lawley, Steven Bisbey, in the High Court of Justice Queen's Bench Division, Case 1986 C No. 12230 [Sep.St.Nos. 43-44];

* Uwe Geertz and Steven Fishman, anti-Scientology litigants in the case of Church of Scientology International v. Steven Fishman, et al., United States District Court for the Central District of California Number 91-6426 HLH(Tx) [Sep.St.Nos. 45-46];

* Tilly Good, a claimant against the Church of Scientology, Mission of Sacramento Valley [Sep.St.Nos. 36-37];

* Denise Cantin, a claimant against the Church of Scientology of Orange County; Church of Scientology of Boston; and Church of Scientology, Flag Service Organization [Sep.St.Nos. 36-37]; and

* Ed Roberts, a claimant against the Church of Scientology of Stevens Creek [Sep.St.Nos. 36-37].

6. Between 1992 and the present, Armstrong breached paragraph 7(D) of the Agreement by contacting media representatives, granting interviews and attempting to assist media representatives in the preparation for publication or broadcast magazine articles, newspaper articles, books, radio and television programs, about or concerning the Church and/or other persons and entities referred to in paragraph 1 of the Agreement. These media representatives included:

* Cable Network News: reporter Don Knapp, in March, 1992 [Sep.St.Nos. 47-48];

* American Lawyer Magazine: reporter Bill Horne, in March, 1992

- 1 [Sep.St.No. 49];
- 2 * Los Angeles Times: reporter Bob Welkos, in May, 1992; and reporter
- 3 Joel Sappell, in June, 1993 [Sep.St.Nos. 50-51];
- 4 * CAN Video Interview, with anti-Scientologists "Spanky" Taylor and
- 5 Jerry Whitfield, in November, 1992 [Sep.St.No. 52];
- 6 * KFAX Radio: Interview planned but prevented in April, 1993
- 7 [Sep.St.No. 53];
- 8 * Newsweek Magazine: reporter Charles Fleming, in June, 1993 and
- 9 August, 1993 [Sep.St.No. 54-56];
- 10 * Daily Journal: reporter Mike Tipping, in June, 1993 [Sep.St.No. 57];
- 11 * Time Magazine: reporter Richard Behar, in March, 1992 and in June,
- 12 1993 [Sep.St.Nos. 58-59];
- 13 * San Francisco Recorder: reporter Jennifer Cohen, in August, 1993
- 14 [Sep.St.No. 60];
- 15 * E! Entertainment Network: reporter Greg Agnew, in August, 1993
- 16 [Sep.St.No. 61];
- 17 * WORD Radio: Pittsburgh, Pennsylvania, interviewed in the fall of 1993
- 18 [Sep.St.No. 62];
- 19 * St. Petersburg Times: St. Petersburg, Florida, reporter Wayne Garcia,
- 20 in the fall of 1993 [Sep.St.No. 63];
- 21 * Premiere Magazine: letter to the editor, in October, 1993 [Sep.St.No.
- 22 64];
- 23 * Mirror-Group Newspapers: United Kingdom, in May, 1994
- 24 [Sep.St.No. 65];
- 25 * Gauntlet Magazine: New York, New York, reporter Rick Cusick in
- 26 June, 1994 [Sep.St.No. 66];
- 27 * Pacific Sun Newspaper: reporter Rick Sine, in June and July, 1994
- 28 [Sep.St.No. 67];

1 * Disney Cable: reporter Marsha Nix, in August, 1994 [Sep.St.No. 68];
2 and

3 * Tom Voltz: Swiss author writing a book about Scientology, in
4 October, 1994 [Sep.St.No. 69].

5 7. Between 1992 and the present, Armstrong breached paragraph 7(D)
6 of the Agreement by preparing and distributing at least three manuscripts
7 concerning his claimed experiences in and with Scientology, including a treatment
8 for a screenplay which he intends to turn into a film [Sep.St.Nos.70-71].

9 8. Between 1991 and the present, Armstrong further breached
10 paragraph 7(D) of the Agreement by disclosing his claimed experiences in Scientology
11 Scientology to each of the following persons or groups, not previously identified:
12 Robert Lobsinger [Sep.St.No. 72]; the New York Times [Sep.St.No. 73]; Toby
13 Plevin, Stuart Culter, Anthony Laing, Kent Burtner, and Margaret Singer
14 [Sep.St.No. 74]; Priscilla Coates [Sep.St.No. 75]; Omar Garrison [Sep.St.No. 76];
15 Vaughn and Stacy Young [Sep.St.No. 77]; a Stanford University psychology class
16 [Sep.St.No. 78]; attendees at the 1992 Cult Awareness Network Convention
17 [Sep.St.No. 79]; and Hana Whitfield [Sep.St.No. 80].

18 9. Defendant Armstrong has reiterated numerous times that he intends
19 to continuing breaching the Agreement unless he is ordered by the Court to cease
20 and desist [Sep.St.Nos. 87-97].

21 10. Plaintiff's legal remedies are inadequate insofar as the scope of the
22 relief ordered below is concerned. Tamarind Lithography Workshop, Inc. v. Sanders
23 (1983) 143 Cal.App.3d 571, 577-578, 193 Cal.Rptr. 409, 413.

24 Accordingly, the Court finds that entry of a permanent injunction in this
25 action is necessary in this action because pecuniary compensation could not afford
26 the Church adequate relief, and the restraint is necessary in order to prevent a
27 multiplicity of actions for breach of contract. Civil Code § 3422(1),(3). A ORDER
28 of injunction is therefore entered as follows:

1 Defendant Gerald Armstrong, his agents, employees, and persons acting in
2 concert or conspiracy with him are restrained and enjoined from doing directly or
3 indirectly any of the following:

4 1. Voluntarily assisting any person (not a governmental organ or
5 entity) intending to make, intending to press, intending to arbitrate, or
6 intending to litigate a claim, regarding such claim or regarding pressing,
7 arbitrating, or litigating it, against any of the following persons or entities:

- 8 o The Church of Scientology International, its officers, directors, agents,
9 representatives, employees, volunteers, successors, assigns and legal
10 counsel;
- 11 o The Church of Scientology of California, its officers, directors, agents,
12 representatives, employees, volunteers, successors, assigns and legal
13 counsel;
- 14 o Religious Technology Center, its officers, directors, agents,
15 representatives, employees, volunteers, successors, assigns and legal
16 counsel;
- 17 o The Church of Spiritual Technology, its officers, directors, agents,
18 representatives, employees, volunteers, successors, assigns and legal
19 counsel;
- 20 o All Scientology and Scientology affiliated Churches, organizations and
21 entities, and their officers, directors, agents, representatives,
22 employees, volunteers, successors, assigns and legal counsel;
- 23 o Author Services, Inc., its officers, directors, agents, representatives,
24 employees, volunteers, successors, assigns and legal counsel;
- 25 o The Estate of L. Ron Hubbard, its executor, beneficiaries, heirs,
26 representatives, and legal counsel; and/or
- 27 o Mary Sue Hubbard;

28 (Hereinafter referred to collectively as "the Beneficiaries");

1 2. Voluntarily assisting any person (not a governmental organ or
2 entity) defending a claim, intending to defend a claim, intending to defend an
3 arbitration, or intending to defend any claim being pressed, made, arbitrated
4 or litigated by any of the Beneficiaries, regarding such claim or regarding
5 defending, arbitrating, or litigating against it;

6 3. Voluntarily assisting any person (not a governmental organ or
7 entity) arbitrating or litigating adversely to any of the Beneficiaries;

8 4. Facilitating in any manner the creation, publication, broadcast,
9 writing, filming audio recording, video recording, electronic recording or
10 reproduction of any kind of any book, article, film, television program, radio
11 program, treatment, declaration, screenplay or other literary, artistic or
12 documentary work of any kind which discusses, refers to or mentions
13 Scientology, the Church, and/or any of the Beneficiaries;

14 5. Discussing with anyone, not a member of Armstrong's
15 immediate family or his attorney, Scientology, the Church, and/or any of the
16 Beneficiaries;

17 In addition, it is ORDERED that, within 20 days of the issuance of this Order,
18 Armstrong shall:

19 1. Return to the Church any documents which he now has in his
20 possession, custody or control which discuss or concern Scientology, the
21 Church and/or any person or entity referred to in paragraph 1 of the "Mutual
22 Release of All Claims and Settlement Agreement" of December, 1986, other
23 than documents which have been filed in this litigation.

24 It is further ORDERED that during the pendency of this litigation, documents
25 which have been filed in this litigation may be retained by Armstrong's counsel.
26 Those documents are to remain sealed, in the possession of Mr. Greene or any
27 successor counsel, and may not be distributed to third parties. At the conclusion
28 of the instant litigation, it is ORDERED that all documents from this case in

1 counsel's possession which do not comprise counsel's work product will be
2 delivered to counsel for plaintiff. Counsel's work product may be retained by
3 Armstrong's counsel.
4

5 DATED: _____, 1995

6 OCT 17 1995

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THE HONORABLE GARY W. THOMAS
SUPERIOR COURT JUDGE

EXHIBIT B

MOXON & BARTILSON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028
TELEPHONE (213) 960-1936
TELECOPIER (213) 953-3351

KENDRICK L. MOXON

LAURIE J. BARTILSON

ALSO ADMITTED IN
THE DISTRICT OF COLUMBIA

ALSO ADMITTED IN
MASSACHUSETTS

January 23, 1996

BY TELEFAX AND U.S. MAIL

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

Re: Church of Scientology International v. Gerald Armstrong
Adversary Proceeding No. 95-1164, United States Bankruptcy
Court for the Northern District of California

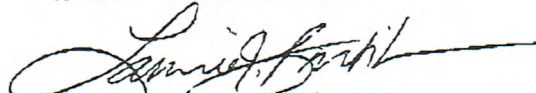
Dear Mr. Armstrong:

In light of the rulings recently received in the superior court action, I intend to seek leave of the bankruptcy court to amend the adversary complaint in this action and to continue the trial date. Because the trial date is so close, I propose to do so on shortened time. Please advise me whether you will stipulate to have plaintiff's motion to amend the complaint and continue the trial date heard on Friday, February 2, 1996, at 11:00 a.m.

You are advised that I will promptly seek leave from the court on an ex parte basis to have the motion heard on shortened time in the event that you are not willing to stipulate.

Sincerely,

MOXON & BARTILSON


Laurie J. Bartilson

LJB:aeu

cc: Andrew H. Wilson, Esq.

EXHIBIT C

January 23, 1996

Laurie J. Bartilson, Esquire
Moxon & Bartilson
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028

By Fax (213)953-3351

Re: Scientology v. Armstrong
Marin Superior Court
Case No. 157680
US Bankruptcy Court
Northern District of California
Case No. 95-10911 aj
Adv. No. 95-1164

Dear Ms. Bartilson:

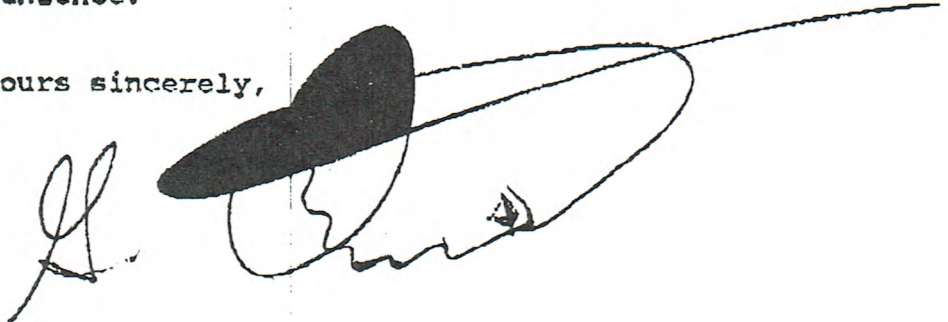
I cannot respond to all you've said in your last 3 letters because, as I've said to you I'm sure before, I don't know what to say. I will, however, respond to three points, a response to which may smooth resolution, correct a misunderstanding, or avoid the mess of war.

1. I don't have the organization's original documents. You do. You should be able to confirm this without any trouble.

2. I didn't fire my lawyer.

3. You mention rulings recently received in the superior court action upon which you wish to base your request to amend your complaint in the bankruptcy case and continue the trial date. I have not seen such rulings. Will you please mail to me at your earliest convenience.

Yours sincerely,



Gerry Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450